

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Auction of FM Translator Construction Permits)	AU Docket No. 17-351
Scheduled for June 21, 2018)	

To: The Commission

REPLY COMMENTS OF iHEARTCOMMUNICATIONS, INC.

iHeartCommunications, Inc. hereby files these Reply Comments on the behalf of three of its indirect subsidiaries (the “iHeart Applicants”) 1/ in connection with the Public Notice, Auction of FM Translator Construction Permits Scheduled for June 21, 2018. 2/

iHeart’s Comments in this proceeding established that the grant by the Commission of waivers of Section 1.2105(b)(2) of the Commission’s Rules, 3/ in order to allow the iHeart Applicants, and any other similarly situated Auction 83 applicants, to participate in the upcoming June 2018 Auction 83, notwithstanding an interim “major change” in ownership at the parent level, would serve the public interest. iHeart pointed to the unique circumstances of Auction 83 – in particular, the unprecedented passage of time since the short forms were filed in March 2003 until the proposed June 2018 bidding window – as well as the unique circumstances of the iHeart Applicants, whose parent company was the subject during that period of a going

1/ The iHeart Applicants here are (1) Clear Channel Broadcasting Licenses, Inc., (2) Capstar TX, LLC (the successor to Capstar TX Limited Partnership), and (3) AMFM Radio Licenses, LLC (the successor to Cleveland Radio Licenses, LLC).

2/ See Public Notice, Auction of FM Translator Construction Permits Scheduled for June 21, 2018; Comment Sought on Competitive Bidding Procedures for Auction 83, DA 18-11, AU Docket No. 17-351 (rel. Jan. 16, 2018) (the “Auction 83 Public Notice”).

3/ 47 C.F.R. § 1.2105(b)(2).

private transfer of control wholly unrelated to the pending FM translator short-form applications. That transfer of control, found by the Commission to promote the public interest, involved multiple licensees, impacted over one thousand broadcast station authorizations and implemented a restructuring approved by public shareholders.

Now, nearly 15 years after approximately 13,000 Form 349 Tech Box's were filed in the Auction 83 filing window, the Media Bureau's and the Wireless Telecommunications Bureau's efforts have whittled down the mutually exclusive proposals to fifty groups, twelve of which include one of the iHeart Applicants. Other than iHeart, no party to these fifty groups (the "MX Groups") has filed Comments seeking a waiver of the major ownership change rule.

The only other party to an MX Group filing Comments in response to the Auction 83 Public Notice was Frank G. McCoy, who filed in opposition to Section 1.2105(b)(2) waivers for the iHeart Applicants. ^{4/} McCoy has an obvious incentive to knock iHeart out of Auction 83, as such action would turn McCoy's FM translator application for Clyde, North Carolina (currently mutually exclusive with an iHeart Applicant's application for a new Waynesville, North Carolina FM translator) into a singleton, thereby removing MX Group MM-FMT042 from the June 2018 auction.

McCoy argues that grant of waivers of Section 1.2105(b)(2) for iHeart's interim transfer of control would overturn "long-settled expectations and would be contrary to fundamental fairness." ^{5/} McCoy's arguments boil down to two basic assertions: (1) that McCoy's expectations of which entity he would be bidding against in an MX group these many years later were cast in stone in 2003, including how that competing entity's parent ownership

^{4/} See Frank G. McCoy, "Comments Regarding Major Changes in Ownership" (Feb. 6, 2018).

^{5/} See *id.* at 1.

would be structured, and (2) it would be too difficult for the Bureaus to draw a line among all the theoretical major changes that would, or would not, justify a waiver.

Any suggestion that McCoy or others were relying on information frozen in 2003 to develop their bidding strategies for the June 2018 auction is fanciful. For one, it was not until 2013, subsequent to the well-publicized iHeart going private restructuring, that the Media Bureau even identified the Auction 83 mutually-exclusive groups. ^{6/} Furthermore, as announced in this year's Auction 83 Public Notice that each of the remaining MX Group applicants will be required to file in an upcoming "remedial" filing window, "to bring its previously-filed FCC Form 175 information into compliance with current system requirements, as well as to review, update and confirm information required to be disclosed pursuant to the Commission's competitive bidding rules." ^{7/} At that point, McCoy and others participating in Auction 83 will have across-the-board updated information on which to formulate their bidding strategies.

Secondly, it appears that only the iHeart Applicants are seeking waivers of Section 1.2105(b)(2) for an interim major change in ultimate ownership. Notwithstanding McCoy's fears of where to draw the line, this is not a rule making proceeding, and the Bureaus are not tasked with considering every potential hypothetical transfer of control scenario. Instead, the focus must be whether the public interest will be served here and now, for this Auction 83 proceeding, with waivers for the iHeart Applicants.

The case for waivers of Section 1.2105(b)(2) for the iHeart Applicants is compelling. At this juncture, the Bureaus are presented with the unique circumstances of this specific auction proceeding, pending for over 14 years, with three commonly-controlled

^{6/} See *FM Translator Auction 83 Mutually Exclusive Applicants Subject to Auction*, Public Notice, 28 FCC Rcd 9716 (MB 2013).

^{7/} See Auction 83 Public Notice at ¶ 5 and n.9.

applicants whose ultimate parent company undertook a going private restructuring resulting in a transfer of control at the parent level, with no applicant-level sale of the FM translator applicants or their assets, and which was clearly a restructuring undertaken for business reasons entirely unrelated to the handful of iHeart FM translator applications. Add in that, in this proceeding, there will be a remedial filing window before the bidding window opens, providing updated information for all MX Groups, on which to formulate their bidding strategies. Not only would the Section 1.2105(b)(2) waivers allow the iHeart Applicants to have a chance to serve the listening public as they have proposed since 2003, but such waivers would encourage robust participation in the Auction 83 bidding rounds, to the benefit of the U.S. Treasury.

Turning to a procedural matter relating to applicants under common control, iHeart notes that in its Comments in this proceeding, iHeart endorsed the Commission implementing revised filing and bidding procedures for Auction 83 applicants, including opening a remedial filing window, to facilitate the participation in the bidding process of applicants under common control, such as the iHeart Applicants. Specifically, given that the procedural rule for submitting “short form” applications (FCC Form 175) has changed since 2003, to the extent waivers of the revised rule is necessary for the processing of Auction 83 Form 175s by commonly-controlled applicants, iHeart requests such waivers for the iHeart Applicants.

By way of background, in 2003, as permitted by the Commission’s short-form rule then in effect, 8/ each of the iHeart Applicants filed separate Form 175s during the Auction 83 window, corresponding with such iHeart Applicant’s Tech Box proposals for new

8/ 47 C.F.R. § 1.2105(a) (2002).

FM translators. 9/ These proposed new FM translators will be “fill-in” translators, and the iHeart entity filing the subject Form 349 Tech Box matched the iHeart entity that was the licensee of the primary station to be rebroadcast by the proposed FM translator. Conforming the FM translator licensee to the primary station licensee simplifies business, marketing and accounting matters for the stations once the translator begins operations. 10/

As noted in the Auction 83 Public Notice, Section 1.2105 of the Commission’s Rules has been revised since 2003. In particular, in 2015, the Commission added Section (a)(3) to Section 1.2105, prohibiting an entity from having a controlling interest in more than one short-form application. 11/ When reviewing in 2015 the then existing short-form process, the Commission stated: “We have previously recognized that the participation of commonly controlled entities in an auction may serve legitimate business purposes because such entities may have different business plans, financing requirements, or marketing needs, while acknowledging such situations might create risk to the competitiveness of the auction

9/ The iHeart Applicants’ 2003 Form 175s identified, in accordance with then Section 1.2112, their organizational structure, which documented that each iHeart Applicant was under the ultimate control of Clear Channel Communications, Inc. (now named iHeartCommunications, Inc.).

10/ iHeart is the ultimate parent company of several licensee entities, including the iHeart Applicants here, which reflects acquisitions and mergers over the years of different licensee entities. All of the iHeart Applicants here were part of the iHeart umbrella in advance of 2003, continuing until the present. Consequently, at all relevant times for this proceeding, the iHeart Applicants have been under common control.

11/ See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, 30 FCC Rcd 7493, 7579-81 [¶¶ 205-08] (2015) (“*Updating Part 1 Report and Order*”).

process.” ^{12/} However, because of changes in the auction process, including the implementation of anonymous bidding, the Commission did decide in 2015 to prohibit entities under common control from filing separate short-form applications, noting that “[t]he approach we adopt today is consistent with the views of commenters that broadly supported the *NPRM*’s proposal to prohibit the filing of short-form applications by entities under the common control of a single individual or set of individuals in a particular geographic license area or overlapping areas.” ^{13/}

The Auction 83 Public Notice sought comment as to “whether waiver of certain provisions of Section 1.2105 to allow applicants to bring their applications into compliance with the current rules would serve the underlying purposes of these current prohibitions better than strict enforcement under these circumstances,” and if so, “how might applicants bring themselves into compliance with current requirements during the upcoming remedial filing window?” ^{14/}

One option suggested by the Auction 83 Public Notice would be to require Auction 83 applicants under common control “to participate through a single bidding entity by filing a single [Form 175] application covering all of the MX engineering proposals applied for by the separate commonly controlled applicants.” ^{15/} iHeart is in support of such a process, whereby the Commission would grant a waiver of Section 1.2105(a)(3), to the extent necessary, and any commonly controlled applicants, such as the iHeart Applicants here, would participate through one bidding entity identified on one Form 175 application, filed during the remedial window, covering the outstanding Auction 83 Tech Box proposals of these commonly controlled applicants. This process would further the Commission’s underlying purpose when it revised

^{12/} *Id.* at 7580 [¶ 206].

^{13/} *Id.*

^{14/} Auction 83 Public Notice at ¶ 11.

^{15/} *Id.*


Section 1.2105 in 2015, to further “the principle that an entity may generally participate in bidding only through a single auction applicant [which] will promote transparency in Commission auctions and will promote straightforward bidding activity by separate bidding entities.” 16/

Good cause is demonstrated for the grant to the iHeart Applicants of waivers of Section 1.2105(b)(2) in order to allow the iHeart Applicants to report, without dismissal, the interim major ownership change at the holding company level which was unrelated to the pending FM translator construction permit applications. Moreover, to the extent necessary, the Bureaus should grant waivers of Section 1.2105(a)(3), and specify that during the remedial filing window for Auction 83 any commonly controlled applicants, such as the iHeart Applicants here, should participate through one bidding entity identified on one Form 175 application covering the outstanding Auction 83 Tech Box proposals filed by such commonly controlled applicants.

16/ See *Updating Part I Report and Order* at 7581 [¶ 208]. The Auction 83 Public Notice also states that “[u]nder this approach, we propose that any commonly controlled applicants that combine their applications for purposes of bidding would be able to apply separately post-auction for construction permits.” See Auction 83 Public Notice at ¶ 11. iHeart supports such a procedure, as it would maintain the business, marketing and accounting advantages of the FM translator licensee matching the licensee of the primary station, whenever feasible.

Respectfully submitted,

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